

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,
West Virginia citizen and taxpayer,

Petitioner,

v.

Civil Action Number: 18-P-442
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,

Respondent.

RESPONDENT'S MOTION TO STAY DISCOVERY

James Conley Justice, II, Governor of the State of West Virginia (hereinafter "Respondent"), by and through the undersigned counsel, respectfully moves this Court, pursuant to Rule 26(c) of the West Virginia Rules of Civil Procedure, to stay discovery in this matter until such time as the Court rules upon Respondent's motion to dismiss. In support of this motion, Respondent states as follows:

1. Petitioner G. Isaac Sponaugle, III (hereinafter "Petitioner") filed the instant Petition for Writ of Mandamus against Respondent, in his official capacity as Governor of the State of West Virginia, asking this Court to order Respondent to "reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office[.]"
2. On February 19, 2019, Respondent filed a motion to dismiss the Petition (together with a supporting memorandum of law), arguing that Petitioner is not entitled to a writ of mandamus as a matter of law.

3. On February 28, 2019, Respondent was served with “Petitioner’s First Combined Discovery Directed to Respondent.” A copy of these discovery requests is hereto as Exhibit A.¹

4. Rule 26(c)(2) of the West Virginia Rules of Civil Procedure allows a court to order that “discovery may be had only on specified terms and conditions, including a designation of the time or place.” W.Va. R. Civ. P. 26(c)(2). The West Virginia Supreme Court of Appeals has recognized that “Rule 26(c)(2) may be used to stay discovery pending the outcome of a dispositive motion or other matter.” State ex rel. Nationwide Mut. Ins. Co. v. Kaufman, 658 S.E.2d 728, 735 (W.Va. 2008)(citing Cleckley, et al., *Litigation Handbook*, § 26(c)(2), p. 758). West Virginia federal courts have similarly held that Rule 26(c) of the Federal Rules of Civil Procedure “vests the court with discretion to stay discovery in advance of deciding a pending dispositive motion.” See Bragg v. United States, 2010 WL 3835080 (S.D.W. Va. 2010); Bishop v. Quicken Loans, Inc., 2010 WL 3359604 (S.D.W. Va. 2010).

5. While the West Virginia Supreme Court of Appeals has not elaborated on the factors to be considered in deciding a motion to stay discovery pending the outcome of a dispositive motion, the federal courts have done so. In Bragg, the court set forth several factors to guide the decision as to whether to stay discovery while a dispositive motion is pending:

In considering whether a stay of all discovery pending the outcome of a dispositive motion is warranted, a case-by-case analysis is required, since such an inquiry is necessarily fact-specific and depends on the particular circumstances and posture of each case. To assist in this determination, the Court is guided by the following factors, none of which is singly dispositive: the type of motion and whether it is a challenge as a “matter of law” or to the “sufficiency” of the allegations; the nature and complexity of the action; whether counterclaims and/or cross-claims have been interposed; whether some or all of the defendants join in the request for a stay; the

¹ By filing this motion to stay, Respondent is not conceding that Petitioner’s discovery requests are appropriately tailored or otherwise not objectionable. Respondent reserves the right to object to any and all of Petitioner’s discovery requests if this motion is denied and discovery is allowed to proceed.

posture or stage of the litigation; the expected extent of discovery in light of the number of parties and complexity of the issues in the case; and any other relevant circumstances.

2010 WL 3835080 at *1 (*citing* Hachette Distribution, Inc. v. Hudson County News Co., Inc., 136 F.R.D. 356, 358 (E.D.N.Y.1991)).²

6. In the present case, these factors weigh heavily in favor of granting a stay. First, the basis for Respondent's motion to dismiss is that Petitioner is not entitled to the mandamus relief he seeks as a matter of law. As set forth in greater detail in Respondent's motion to dismiss and supporting memorandum, (1) mandamus cannot be employed to prescribe the manner in which a government official shall act, and the purported duty to "reside" at the seat of government is so nebulous and laden with discretion that any writ granted in this case would necessarily involve prescribing the manner in which the Governor shall act; (2) mandamus is not available to compel a general course of conduct to be performed over a long period of time (as opposed to a discrete act), especially where it would require this Court to monitor and supervise the conduct of the State's Chief Executive; and (3) mandamus is unavailable where, as here, other adequate remedies exist. Inasmuch as the Petition fails on its face as a matter of law, Petitioner should not be permitted to force Respondent to engage in discovery prior to dismissal.

² Rule 26(c) of the Federal Rules of Civil Procedure is substantially similar to Rule 26(c) of the West Virginia Rules of Civil Procedure. Because the West Virginia Rules of Civil Procedure are "practically identical" to the Federal Rules of Civil Procedure, the West Virginia Supreme Court of Appeals has a practice of giving "substantial weight" to federal cases in determining the meaning and scope of the state rules. *See Painter v. Peavy*, 451 S.E.2d 755, 758 n.6 (W.Va. 1994); *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 335 n.6 (W.Va. 1995); *Lawyer Disciplinary Bd. v. Cunningham*, 464 S.E.2d 181, 187 n.11 (W.Va. 1995).

7. Second, Petitioner has served invasive and burdensome discovery requests seeking detailed and sensitive information about such matters as Respondent's sleeping habits, Respondent's movements throughout the State, and the location of Respondent's personal property. *See* Exhibit A. Petitioner even seeks production of all work-related emails and text messages that Respondent has sent outside of his office at the Capitol complex. *Id.* Respondent should not be forced to devote time and resources to opposing and/or responding to these invasive discovery requests during the pendency of his motion to dismiss.

8. Third, no counterclaims or cross-claims have been interposed.

9. Fourth, the only respondent in this case seeks a stay; there are no other respondents who have not joined in the request for a stay.

10. Finally, this litigation is in its infancy. As such, a stay of discovery will save the State from being forced to devote substantial resources to an action that must be dismissed as a matter of law.

WHEREFORE, Respondent respectfully moves this Court to stay any and all discovery in this matter until the Court rules on Respondent's motion to dismiss. Respondent certifies that he has in good faith conferred with Petitioner in an effort to resolve this issue without court action.

Respectfully submitted,

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,

By Counsel,

A handwritten signature in blue ink, appearing to read "M. Carey", is written over a horizontal line.

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PETITIONER'S FIRST COMBINED DISCOVERY DIRECTED TO RESPONDENT

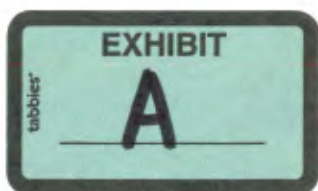
Pursuant to Rules 33, 34 and 36 of the West Virginia Rules of Civil Procedure, Petitioner, requests that Respondent, namely, James Conley Justice, II, answer and respond to the following discovery requests within 30 days after the service of the summons and petition upon it:

REQUESTS FOR ADMISSION

ADMISSION REQUEST NO. 1: Please admit that you have not reside at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, or any other residence located inside the municipal boundaries of Charleston, West Virginia, since January 16, 2017.

ADMISSION REQUEST NO. 2: Please admit that you do not plan on residing at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, or any other residence located inside the municipal boundaries of Charleston, West Virginia, during the remainder of the term of your office.

ADMISSION REQUEST NO. 3: Please admit that you have not kept all your records, books and papers, written or electronic, pertaining to the office of West Virginia Governor exclusively at the West Virginia Capitol 1900 Kanawha Blvd E, Charleston, West Virginia.



ADMISSION REQUEST NO. 4: Please admit that you do not plan on keeping all your records, books and papers, written or electronic, pertaining to the office of West Virginia Governor exclusively at the West Virginia Capitol 1900 Kanawha Blvd E, Charleston, West Virginia.

INTERROGATORIES

INTERROGATORIES REQUEST NO. 1: Identify your full name, address, and date of birth.

INTERROGATORIES REQUEST NO. 2: Identify by name each person who prepared and/or contributed to answering these discovery requests.

INTERROGATORIES REQUEST NO. 3: Identify by name each person who you plan to call as a witness in defense of this action including their respective addresses, telephone number and the subject matter on which the witness is expected to testify.

INTERROGATORIES REQUEST NO. 4: Please identify the name, address and telephone number of each witness known to you to have information relevant and material to the claims presented in this action or to any defense asserted thereto.

INTERROGATORIES REQUEST NO. 5: Please identify each person whom you expect to call as an expert witness at the trial, produce a current curriculum vitae and disclose pursuant to West Virginia Rule of Civil Procedure 26(b)(4) the following:

- (a) The subject matter on which the expert witness is expected to testify;
- (b) The substance of the facts and opinions to which the expert is expected to testify; and,
- (c) A summary of the grounds for each opinion.

INTERROGATORIES REQUEST NO. 6: Identify your occupation or employment and your place of residency for the past 5 years. Please include name and address of occupation or employment and the addresses of your residency for the past 5 years in your answer.

INTERROGATORIES REQUEST NO. 7: Please provide in detail how many nights you spent overnight at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017, or any other residence located inside the municipal boundaries of Charleston, West Virginia. Include the dates of the overnights that you spend there in your response.

INTERROGATORIES REQUEST NO. 8: Please provide in detail how many nights you have allowed guests to spend overnight at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017. Include the dates of the overnights that you allowed guests to spend overnight, their respective addresses, telephone numbers and what was the occasion for their overnight stay at the Governor's Mansion.

INTERROGATORIES REQUEST NO. 9: Please provide in detail a list that shows an accounting of any personal property items that you have located at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia and on what date you moved those items into the Mansion. For purposes of this question, personal property would include, but limited to, beds, couches, furniture, appliances, televisions, clothes, etc.

INTERROGATORIES REQUEST NO. 10: Describe in detail why you contend that you can reside in Greenbrier County, West Virginia, and don't have to reside in Charleston, West Virginia, regarding the official duties of your office as Governor.

INTERROGATORIES REQUEST NO. 11: Please provide in detail how many days you have physically spent at your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia. Include the dates of the days spend at your office in your response.

INTERROGATORIES REQUEST NO. 12: Describe in detail the way you contend why you can work away from the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia, on a regular basis rather than being at your office located at the West Virginia Capitol regarding the official duties of your office.

INTERROGATORIES REQUEST NO. 13: Describe in detail the public records, books and papers, electronic or otherwise, that are located outside of the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia. Provide a detail list of the documents, what they concern and copies of the same within your answer.

INTERROGATORIES REQUEST NO. 14: Describe in detail how you can keep up with the daily functions of the Office of Governor when you are not present at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia.

INTERROGATORIES REQUEST NO. 15: Please produce a copy of all exhibits which you intend to introduce at the trial of this case, either in Defendant's case in chief or in rebuttal.

**REQUESTS FOR PRODUCTION OF DOCUMENTS
PLEASE PRODUCE:**

PRODUCTION REQUEST NO. 1: Please produce a photocopy of your 2017 and 2018 federal and state tax returns.

PRODUCTION REQUEST NO. 2: Please produce a photocopy of all security logs and any records that show dates and times by the West Virginia State Police or the West Virginia Capitol Police when you were present and when you spent an overnight(s) at West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 3: Please produce a photocopy of all security logs and any records that show dates and times by the West Virginia State Police or the West Virginia

Capitol Police when guests were present and spent an overnight(s) at West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 4: Please produce a photocopy of all security logs and any records of the security details provided to you by the West Virginia State Police and the West Virginia Capitol Police that show the dates and times when you were present at your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 5: Please produce a photocopy of all security logs and any records of the security details provided to you by the West Virginia State Police that show the dates and times when you were under their protection while in Greenbrier County, West Virginia, since January 16, 2017.

PRODUCTION REQUEST NO. 6: Please produce a photocopy of all security logs and any records of the security details provided to you by the West Virginia State Police that show the dates and times when you were under their protection while you were outside of the State of West Virginia since January 16, 2017.

PRODUCTION REQUEST NO. 7: Please produce a photocopy of an expense report of the security details provided to you by the West Virginia State Police that show the dates and times when you were under their protection since January 16, 2017 in its totality and a breakdown of the expenses of the security that is provided to you at the Mansion, Capital, Greenbrier County, traveling throughout the State of West Virginia and traveling out of the State of West Virginia.

PRODUCTION REQUEST NO. 8: Please produce a photocopy of an expense report of the budget, expenses paid, security detail, Mansion staff salaries, maintenance and meals for West

Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017.

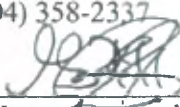
PRODUCTION REQUEST NO. 9: Please produce a photocopy of all public records, books and papers, electronic or otherwise, that are not located at your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia.

PRODUCTION REQUEST NO. 10: Please produce a photocopy of all call logs, emails and text messages that you have made doing your official state work as Governor away from your office at the West Virginia Capitol located at 1900 Kanawha Blvd E, Charleston, West Virginia.

PRODUCTION REQUEST NO. 11: Please produce a photocopy of the oath or affirmation of office for Governor of the State of West Virginia.

G. Isaac Sponaugle, III
Petitioner

SPONAUGLE & SPONAUGLE
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G. Isaac Sponaugle, III
State Bar #9720
Petitioner

CERTIFICATE OF SERVICE

I, G. Isaac Sponaugle III, Petitioner does certify that a true copy of the foregoing *Petitioner's First Combined Discovery Directed to Respondent* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at P.O. Box 913, Charleston, West Virginia 265323, on this 25th day of February 2019.



Petitioner

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JAMES CONLEY JUSTICE, II,
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Respondent.

CERTIFICATE OF SERVICE

I, David R. Pogue, do hereby certify that on the 1st day of March, 2019, I have served the foregoing **“Respondent’s Motion to Stay Discovery,”** upon the parties to this action, via Electronic Mail and United States Mail, postage pre-paid, addressed as follows:

G. Isaac Sponaugle, III
Sponaugle & Sponaugle
Attorney’s At Law
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isaac@sponauglelaw.com

Petitioner, Pro Se



David R. Pogue, WVSb No. 10806

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March 1, 2019

VIA HAND DELIVERY

Cathy S. Gatson, Clerk
Kanawha County Circuit Court
Kanawha County Judicial Building
111 Court Street
Charleston, WV 25301

Re: Sponaugle v. Justice
Civil Action No. 18-P-442

Dear Ms. Gatson:

Enclosed for filing please find **“Respondent’s Motion to Stay Discovery,”** regarding the above-styled case. By copy of the referenced document, Judge King and all interested parties have been notified of this filing.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



David R. Pogue

DRP/amb
Enclosure

cc: Honorable Charles E. King, Judge (via hand delivery)
G. Isaac Sponaugle, Esq.